



INTERIOR BOARD OF INDIAN APPEALS

Jim Parisien v. Acting Aberdeen Area Director, Bureau of Indian Affairs

28 IBIA 35 (05/22/1995)

Reconsideration denied:
28 IBIA 65



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

JIM PARISIEN,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 95-107-A
ACTING ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	May 22, 1995

Appellant Jim Parisien seeks review of a January 24, 1995, decision of the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), as amended on January 31, 1995. The decision concerns appellant's claim to ownership of "5 acres of deeded land [which appellant states he purchased] from Mr. Roy Trottier for a purchase value of \$500.00 back in 1962" (Oct. 24, 1994, letter from appellant to the Turtle Mountain Agency Realty Specialist). The land at issue appears to be Allotment No. 471-A, N½ NW¼ NW¼ NE½, sec. 29, T. 162 N., R. 70 W., 5th P.M., North Dakota, or a portion of that allotment.

The Area Director stated that the records of the Turtle Mountain Agency and the Aberdeen Area Office did not show that appellant owned an interest in this allotment, but rather showed that Trottier owned an undivided 1/4 interest in the allotment. The Area Director indicated that if appellant had purchased Trottier's interest, he could have purchased only that undivided 1/4 interest, not the entire interest as appellant was apparently alleging. He further stated that appellant had failed to provide evidence that he had purchased any interest in the land.

The Area Director's January 24, 1995, letter failed to inform appellant of his appeal rights. The January 31, 1995, letter was issued to provide appellant with appeal information. That letter states:

This decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. * * * You must send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs * * *, (2) each interested party known to you, and (3) this office. * * * If you file a notice of appeal, the Board of Indian Appeals will notify you of further appeal procedures.

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal

period. No extension of time may be granted for filing a notice of appeal.
[Emphasis in original.]

The Board received a letter dated May 3, 1995, from appellant in which he referred to an "Appeals Request," dated February 10, 1995," and asked that the Board respond to that request as soon as possible. In a May 9, 1995, letter, the Board informed appellant that it had no appeal pending from him.

On May 19, 1995, the Board received a request from appellant that it reconsider his February 10, 1995, appeal. Although appellant states that the appeal was enclosed, the enclosures included only five return receipt requests, showing service on parties other than the Board. The additional materials included several documents relating to appellant's claim to the property, including the two letters from the Area Director discussed above.

The Board is unable to grant appellant's request. The Board has consistently held that the timely filing of a notice of appeal with it is jurisdictional under its regulations. When a notice of appeal is not timely filed with the Board, even though it is served on interested parties, the Board does not have jurisdiction to consider the matter. See American Land Development Corp. v. Acting Phoenix Area Director, 25 IBIA 120, 121 (1994), and cases cited therein.

Accordingly, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Aberdeen Area Director's January 24 and January 31, 1995, decisions is docketed and dismissed as being untimely filed. 1/

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

1/ This decision does not preclude appellant from submitting to the appropriate BIA official the additional materials he submitted to the Board concerning his alleged purchase of the land at issue.